

**Theatre and Amusement Janitors Union Local 9,  
Service Employees International Union, AFL–  
CIO (American Building Maintenance Co.,  
Inc.) and James M. Coen and Yhya Mohamed.**  
Cases 20–CB–8239, 20–CB–8329, and 20–CB–  
8459

July 19, 1991

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On February 28, 1991, Administrative Law Judge Jerrold H. Shapiro issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.<sup>2</sup>

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Theatre and Amusement Janitors Union Local 9, Service Employees International Union, AFL–CIO, San Francisco, California, its officers, agents, and representatives, shall take the action set forth in the Order.

<sup>1</sup>The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all of the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We note that the judge erred in his citation of the prior Board decision involving the Respondent and Charging Party Yhya Mohamed. The correct citation is *Service Employees Local 9 (Blumenfeld Enterprises)*, 290 NLRB 1 (1988).

<sup>2</sup>We find no merit in the Respondent's exceptions to the judge's recommendation of a broad cease-and-desist order. For the reasons stated by the judge in his decision, we agreed that a broad order is appropriate under the criteria established in *Hickmott Foods*, 242 NLRB 1357 (1979). We also note that the Respondent's brief in support of exceptions incorrectly states that no exceptions were filed to the judge's finding in *Blumenfeld Enterprises* that the Respondent violated Sec. 8(b)(1)(A) by refusing Mohamed's request to see hiring hall dispatch records. In fact, exceptions were filed in that case by the Respondent, which was represented by the same attorney who represented it here and signed the brief in support of exceptions.

*Lucile L. Rosen*, for the General Counsel.

*William A. Sokol (Van Bourg, Weinberg, Roger & Rosenfeld)*, for the Respondent.

## DECISION

### STATEMENT OF THE CASE

JERROLD H. SHAPIRO, Administrative Law Judge. This consolidated proceeding, in which a hearing was held on De-

cember 13, 1990, is based on complaints issued against Theatre and Amusement Janitors Union Local 9, Service Employees International Union, AFL–CIO (the Respondent), by the General Counsel of the National Labor Relations Board (the Board), in Cases 20–CB–8239, 20–CB–8329, and 20–CB–8459, on February 28, May 31, and October 30, 1990, respectively, and on unfair labor practice charges filed against Respondent by James M. Coen in Case 20–CB–8239 on January 9, 1990, and in Case 20–CB–8459 on September 14, 1990,<sup>1</sup> and by Yhya Mohamed in Case 20–CB–8329 on April 11, 1990.<sup>2</sup>

The complaints allege that during the time material, Respondent represented a unit of theatre janitor employees employed by American Building Maintenance Company (the Employer), for purposes of collective bargaining and that Respondent and the Employer are party to a collective-bargaining agreement covering the unit employees which, among other things, requires Respondent to be the sole and exclusive source of referrals of employee-applicants to the Employer.

In Cases 20–CB–8239 and 20–CB–8459 the complaints allege Respondent violated Section 8(b)(2) and (1)(A) of the National Labor Relations Act (the Act), by operating its hiring facility in a discriminatory and arbitrary manner when, in or about the first weeks of August 1989 and September 1990, it failed and refused to refer Coen to employment with the Employer because he refused to serve picket duty as ordered by Respondent and had filed unfair labor practice charges against Respondent.

The complaint in Case 20–CB–8329 alleges that Respondent violated Section 8(b)(2) and (1)(A) of the Act when, on March 10 and 11, 1990, it failed and refused to refer Mohamed to employment with the Employer because Mohamed filed unfair labor practice charges against Respondent with the Board and when, on or about April 26, 1990, it denied Mohamed access to its hiring hall. The complaint in Case 20–CB–8329 further alleges that on or about April 11, 1990, and continuing thereafter, Respondent refused to permit Mohamed to view its hiring hall records showing the names of applicants Respondent referred to jobs and the names of the employers to whom they were referred, and further alleges Respondent engaged in this conduct arbitrarily and because Mohamed filed unfair labor practice charges with the Board, thereby violating Section 8(b)(1)(A) of the Act.

In its answers to each of the aforesaid complaints, Respondent denied having engaged in the alleged unfair labor practices and in its answers to the complaints issued in Cases 20–CB–8239 and 20–CB–8329 alleged, as affirmative defenses, that the complaints in those cases were barred by the applicable statute of limitations and further alleged that those cases should be deferred for action under the arbitration pro-

<sup>1</sup>The record establishes that the charge filed in Case 20–CB–8239 was served on Respondent on January 10, 1990, by certified mail and that the charge filed in Case 20–CB–8459 was served on Respondent on September 17, 1990, by certified mail. There is no evidence to support the complaint's allegation, denied by Respondent, that a first amended charge was filed by Coen in Case 20–CB–8239 on February 28, 1990, and served by certified mail on that date on Respondent.

<sup>2</sup>A first amended charge and a second amended charge in Case 20–CB–8329 was filed and served on Respondent on May 11 and 29, 1990, respectively. The original charge in that case was served on Respondent on April 12, 1990.

vision of the collective-bargaining contract between Respondent and the Employer.<sup>3</sup> Respondent's answers admit that it is a labor organization within the meaning of Section 2(5) of the Act. Also Respondent stipulated that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and meets the Board's applicable discretionary jurisdictional standard. I therefore find that the assertion of the Board's jurisdiction in these cases will effectuate the policies of the Act.

On the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs filed by counsels for the General Counsel and Respondent, I make the following

#### FINDINGS OF FACT

#### The Alleged Unfair Labor Practices

##### A. The Evidence

##### 1. Background

Respondent is a labor organization of approximately 220 members who are employed within the city and county of San Francisco, California, as janitors and in other positions in the entertainment industry, i.e., theaters, race tracks, etc. The Employer is a California corporation with its office and place of business in San Francisco, California, where it is engaged in the business of providing janitorial services to its customers.

Respondent represents for purposes of collective bargaining all the janitors employed by the Employer in theaters within the city and county of San Francisco, California. During the time material Respondent and the Employer were parties to a collective-bargaining agreement effective by its terms from February 15, 1988, to February 14, 1991, governing the terms and conditions of employment of these janitors. Section 2(b) of that agreement reads as follows:

*Hiring:* When new or additional employees are needed, the Employer shall notify the Union of the number of classifications of employees needed. Applicants for jobs shall be referred by the Union to the Employer for employment on a nondiscriminatory basis.

The Employer shall be the sole judge of the competency of all applicants and reserves the right to reject any applicant referred by the Union. The Employer agrees within seven (7) days of the date of hiring to notify the Union of the name or names and addresses of the persons hired and the theaters to which such persons are assigned.

<sup>3</sup> Respondent's contention that the unfair labor practices alleged in the complaints issued in Cases 20-CB-8239 and 20-CB-8329 should be deferred for action under the grievance/arbitration provision of the Respondent's collective-bargaining agreement with the Employer lacks merit because the charges in those cases were filed by individuals, whose interests are adverse to those of the Respondent, and the Employer is not a party to the Board proceeding. See *Iron Workers Local 377 (M.S.B., Inc.)*, 299 NLRB 680 fn. 1 (1990), and cases cited therein. Also, with respect to the complaint's allegations in Case 20-CB-8329, charging Respondent with violating Sec. 8(b)(2) and (1)(A) of the Act for failing to refer Mohamed to the Employer because he filed an unfair labor practice charge, deferral is inappropriate for the additional reason that this allegation involves the question of employees' access to the Board's process, an issue which is solely within the Board's province to decide. See *Laborers Northern California Council (Baker Co.)*, 275 NLRB 278, 288 (1985).

In hiring, the Employer shall give preference to applicants previously employed in the building service industry in the local labor market area.

If the Union is unable to refer to the Employer suitable applicants for employment within a reasonable period of time, the Employer may then hire persons from other sources provided the Employer on the date of hiring shall notify the Union of the name and address of each person hired.

Although at times the Employer may have deviated from the terms of the above-described hiring agreement, Respondent never agreed, expressly or implicitly by a course of conduct, that the Employer was not obligated to abide by the plain language of the hiring agreement. Rather the record indicates that in hiring janitors to work at its customers' theaters, the Employer generally abided by its agreement to hire "new or additional employees" exclusively from Respondent's hiring facility.

In referring employee-applicants to the Employer and other employers, Respondent operates a hiring hall facility at its office. The person in charge of the day-to-day operation of that facility is David Wild, who occupies the position of dispatcher. He is assisted in his job as dispatcher by Ann Ybarreche, who occupies the position of assistant dispatcher. Besides being the dispatcher for Respondent's hiring hall facility, Wild also is employed by Respondent as a business representative. Ybarreche, besides being Respondent's assistant dispatcher, is also employed by Respondent as its sole clerical employee and in this capacity acts as Respondent's bookkeeper, secretary, and receptionist.

The record reveals that in her position as assistant dispatcher, Ybarreche does not decide which of the employee-applicants should be referred to a job, when the Employer requests a referral. Rather, Ybarreche relays the request to Wild and Wild decides which applicant to refer to the Employer.

Respondent apparently takes the position that Ybarreche is merely a clerical employee and does not occupy the position of assistant dispatcher. In concluding she is Respondent's assistant dispatcher, I relied on the following: The admission in Respondent's answer to the complaint in Case 20-CB-8239 that Ybarreche occupied the position of assistant dispatcher; the undisputed fact that occasionally Ybarreche signs her name as "dispatcher" on the dispatch slips issued to employers on behalf of the applicants who are dispatched from Respondent's hiring facility; during a general membership meeting in 1989, the members were informed that David Wild and Ann Ybarreche were Respondent's dispatchers; and, Coen's testimony that when he visited Respondent's facility in 1989 and 1990, he observed that both Wild and Ybarreche acted as dispatchers.

The Employer has cleaning contracts with the owners and operators of the Curran and Golden Gate theaters, where plays are staged for public presentation. Whenever a play opens at either one of these theaters, the Employer contacts Respondent and requests Respondent to dispatch a crew of janitors to the theater for the duration of the play. The Employer's practice is to reemploy the same persons as janitors at those theaters who have worked their previously. Respondent has acquiesced in this policy. Thus, when a new play opens at either of these theaters, the Employer asks Respond-

ent to refer the persons who, in the past, have been regularly employed by the Employer at the theater, and Respondent complies with this request.

The Employer has a cleaning contract with the American Conservatory Theater (ACT) and, as in the case of the Curran and Golden Gate theaters, the Employer regularly re-employs the same persons as janitors at ACT, who have worked there previously. In this regard, when ACT opens its season in the fall of each year, the Employer either personally contacts each regular member of ACT's crew of janitors and asks them to come to work, or contacts Respondent and asks Respondent to dispatch ACT's regular crew of janitors, whom the Employer names. In those instances where the Employer contacts ACT's janitors personally, rather than through the Respondent, it subsequently notifies Respondent that it has gone ahead and reemployed ACT's regular crew of janitors for the new season.

Occasionally, one of the persons regularly employed by the Employer at the Curran or Golden Gate Theater or at ACT, become temporarily unavailable for work and must be replaced. During the past 5 years, on several occasions when this has occurred, the Employer has asked Respondent to dispatch a replacement to fill in for the regular member of the crew who has become unavailable, and in doing so has named the replacement janitor whom it wanted Respondent to dispatch. If the named replacement requested was available for work, Respondent complied with the Employer's request on each of these occasions, except in three instances, *infra*, involving alleged discriminatees Coen and Mohamed.<sup>4</sup>

## 2. Coen's unfair labor practice charges (Cases 20-CB-8239 and 20-CB-8459)

Coen has been a janitor for over 20 years and a member of Respondent since approximately 1974. He has been regularly employed for the past 17 years by the Employer as a janitor as a part of the regular crew of janitors employed at ACT during its yearly repertory season. He was initially referred to this job in 1973 by Respondent and his terms and conditions of employment during his entire period of employment on this job have been governed by collective-bargaining agreements between Respondent and the Employer.

ACT's yearly season for staging its plays begins in or about September and lasts through about May or June. Since Coen is not a new or an additional employee of the Employer with respect to his employment at ACT, but is regularly employed as part of ACT's regular crew of janitors, the Employer at the start of each new season usually personally contacts Coen and the other members of the janitorial crew directly concerning their employment at ACT, rather than request Respondent to dispatch them. However, the record reveals that at the start of ACT's 1987 and 1988 seasons Coen received dispatch slips from Respondent when he went back to work for ACT for the Employer at the start of ACT's 1987 and 1988 seasons.

Since approximately 1979 Respondent has been engaged in a labor dispute with a chain of movie theaters owned and operated by United Artists. Respondent from the start of that dispute required that each of its members spend a certain

amount of time picketing United Artists' theaters. Pursuant to Respondent's requests Coen picketed at various times from 1979 to 1982. In 1982 Coen notified Respondent he no longer intended to obey their requests to picket. Thereafter, from 1982 through 1989, he generally refused Respondent's requests to picket on its behalf at United Artists' theaters, except for two or three occasions, including an 8-month period in 1987-1988, when he did comply with Respondent's requests to picket.

On those occasions during the period from 1982 through 1989 when Coen refused Respondent's requests to picket, intraunion charges were filed against him alleging he violated Respondent's constitution and bylaws by refusing to picket. In the latter part of the 1980s such charges were filed against Coen in 1985, 1986, 1988, and 1989. None of the charges filed with Respondent against Coen for refusing to picket ever resulted in Respondent finding him guilty as charged, nor has Respondent ever fined or otherwise disciplined him for his failure to picket. However, during a hearing before Respondent's executive board held in August 1987 concerning a charge filed against Coen for refusing to picket, the Respondent's vice president Frank Cataldo suggested that if Coen did not want to picket that his job should be taken away, that he should not be allowed to work. Coen's lawyer, who was present, informed Respondent's executive board that if this occurred Coen would sue Respondent. There is no evidence that Respondent ever interfered with Coen's regular employment with the Employer at ACT.

In 1989 during a hearing by Respondent's executive board concerning intraunion charges filed against Francis Holland for refusing to obey Respondent's order to picket a United Artists theater, Respondent's president, Charles Huber, warned Holland that if he did not picket Respondent would take his job. However, as in Coen's case, there is no evidence that Respondent ever interfered with or attempted to interfere with Holland's regular job with the Employer at ACT.

The circumstances leading up to and surrounding the charges filed with Respondent against Coen in 1989 for his refusal to picket, and what occurred at the hearing before the Respondent's executive board concerning those charges, may be briefly summarized as follows. On June 14, 1989, Respondent's secretary-treasurer Alfred Kelly notified Coen, by letter, that Coen had been assigned to picket at one of the United Artists theaters commencing on Wednesday, June 21, 1989, from 5 to 8 p.m. and on each Wednesday thereafter, and warned Coen that Respondent intended to check the picket line and that if Coen was not at his picketing assignment he would be cited under Respondent's constitution and bylaws. Coen did not comply with this request. As a result, Larry Elizarde, one of Respondent's business representatives, who is also employed as its picket line coordinator, filed a charge with Respondent against Coen for failing to picket. On July 27, 1989, Secretary-Treasurer Kelly notified Coen, by letter, to appear before Respondent's executive board on August 14, 1989, "to answer charges for not performing your picket assignment in accordance with Article XX Section (g) and Article XVII, Section 11 of the [Respondent's] Constitution and Bylaws."<sup>5</sup> More specifically, the letter in-

<sup>4</sup>Based on the uncontradicted testimony of the Employer's district manager, Vera Barnard, a disinterested witness whose testimonial demeanor was good (Tr. 159-160, 162-163, 188-190, 195-196).

<sup>5</sup>Sec. (g) of art. XX of Respondent's constitution and bylaws provides in pertinent part that, "[t]he officers of the Union may request any member for

*Continued*

formed Coen that he had failed to carry out his obligation to perform picket line duty as requested by Respondent at one of the United Artists' theaters on several Wednesdays during June and July 1989. The aforesaid charges against Coen were heard by Respondent's executive board on August 14 and 28, 1989.

During the executive board hearing Coen accused Respondent of not referring him to two jobs at the Golden Gate theater because of his refusal to picket. He stated he had not been referred to those jobs even though the Employer had requested him by name and that Respondent had referred new applicants to those jobs instead of him. Respondent's secretary-treasurer, Kelly, responded by stating it was too late for Respondent to do anything about the Employer's request that he be dispatched to the Golden Gate Theater, because the show being staged at the Golden Gate theater had already closed, but that in any event Respondent had not been obligated to refer him to that theater so long as in referring the other applicants instead of Coen Respondent had applied the same practices and rules for every one. In addition, either Kelly or Respondent's vice president, Cataldo, informed Coen that Coen had been recently employed for 9 months and the applicants referred by Respondent to the Golden Gate theater had not been employed as frequently.

The executive board's trial of Coen concluded on August 28, 1989, with a majority of the executive board voting to continue the hearing concerning the charges against Coen to October 2, 1989, because it was the majority's view that Coen by that date would be again employed by the Employer at ACT, and that if he then refused to picket the executive board would reinstate the proceedings against him.

In 1989 Coen's job with the Employer for ACT ended for the 1988-1989 season in late May 1989. Subsequently, during the summer of 1989, from June into September, when he resumed his regular employment with ACT at the start of ACT's 1989-1990 season, Coen, as described *infra*, sought work through Respondent's hiring facility and Respondent offered him just one job referral which he rejected.

On or about June 1, 1989, Coen visited Respondent's office and spoke to Assistant Dispatcher Ybarreche. He told her he was looking for work and asked to be dispatched to one of the theaters where plays were being staged during the summer months. Ybarreche informed him that the Golden Gate Theater was opening shortly and she would submit his name to Wild for dispatch to that theater. Coen returned to Respondent's hiring facility later in June 1989, after having failed to receive a job referral, and asked Ybarreche if he could be dispatched to the Curran Theater or to any other theater where plays were being staged, which needed fill-in janitors. Ybarreche answered by stating she would submit his name to Wild and discuss his request with Wild. Ybarreche also told Coen: "You know what happened in the last in-

stance in June, you did not receive work. It'd be much easier for me to get you work if you return to the picket line."

Late in June 1989 Vera Barnard, the Employer's district manager, personally contacted Coen and, without going through Respondent's hiring facility, hired him to work as the working foreman for the run of a play at the Orpheum Theater.<sup>6</sup> Coen worked there for the Employer late in June as its janitors' foreman for 2 days and then early in July 1989, for the play's remaining 6 days, was replaced by another foreman, but remained on the job as a janitor. As described *supra*, Coen was not dispatched to this job by Respondent, but was hired directly by the Employer. However, Respondent learned of his employment immediately after it began, apparently from the Employer. Respondent did not object to his employment as a janitor at the Orpheum Theater and on July 5, 1989, issued to the Employer a slip dispatching Coen to the Employer at the Orpheum Theater for the remainder of the run of the play being staged there.

In mid-July 1989, following the conclusion of his job at the Orpheum Theater, Coen went to Respondent's office and asked Ybarreche to be dispatched to the Golden Gate Theater. She reduced Coen's request into writing and told him she would place it on Wild's desk and that they would get back to him. Neither Ybarreche nor Wild got back to him.

In August 1989, Vera Barnard, the Employer's district manager, telephoned Respondent's office and spoke to Ybarreche. She asked Ybarreche to dispatch a crew of janitors to the Golden Gate Theater for the play *To The Woods* which was scheduled to open there in 2 to 3 days. Barnard asked Ybarreche to dispatch the three janitors who regularly worked for the Employer at the Golden Gate Theater and asked that a fourth janitor also be dispatched. She specifically asked that Coen be the fourth janitor dispatched. Ybarreche replied she would check to see whether Respondent could dispatch Coen, and then remarked: "You know how they feel about Jim. I don't know if he'll be able to go out." (Tr. 153-157, 173-175.)

The above description of Barnard's conversation with Ybarreche is based on Barnard's uncontradicted testimony. Barnard was a disinterested witness and her testimonial demeanor was good. I have considered that Coen testified it was in September 1989 when Barnard told him she intended to ask that Respondent dispatch him to the Golden Gate Theater. However, I am persuaded that the testimony of Barnard, a disinterested witness, was more reliable than Coen's as to the date when she made this request and find it was in August 1989, not September 1989, when Barnard informed Coen she intended to ask Respondent to dispatch him to the Golden Gate Theater. Immediately after Coen was informed of this by Barnard, he spoke to Ybarreche and told her that a play would be opening at the Golden Gate Theater and he was requesting to be dispatched to that theater. Ybarreche reduced his request into writing and told him she would discuss his request with Wild.

Coen was not dispatched to the Golden Gate Theater, as requested by Barnard. Another applicant was dispatched by Respondent instead. Subsequently, in August 1989, after a general membership meeting, Coen spoke to Wild at Respondent's hiring facility. He told Wild he needed work and

picket duty. . . . Each member upon notification shall report to the Union office within twenty-four (24) hours after receipt of notification and tell the officers in charge of picket assignments the time he can report and the best day suited for him. . . . Any member after being notified by the Union who fails to report or after reporting refuses to do his allotted time on the picket line shall be fined at the minimum rate of \$5 per hour for every hour he was required to and failed to picket." Sec. 11 of art. XVII of Respondent's constitution and bylaws provides in substance that the basis for charges against members for which they shall stand trial shall consist of disobedience to the regulations, rules, mandates, and decrees of Respondent.

<sup>6</sup>Janitors employed by the Employer as working foreman are included in the unit covered by the Employer's collective-bargaining agreement with Respondent.

had asked Respondent to dispatch him to the Golden Gate Theater. Wild replied that a crew had already been picked for that job. Their conversation was interrupted when Wild received a telephone call from the janitor foreman at the Curran Theater who wanted Respondent to dispatch a janitor to that theater and, in response to Wild's inquiry as to who the foreman wanted Wild to dispatch, the foreman gave Wild the name of an individual whom Wild stated he would dispatch. Coen, hearing this conversation, asked to be dispatched to the Curran Theater, explaining again that he needed work. Wild stated he would find something for him. Later that evening Wild mailed Coen a dispatch slip for a job at television station KRON. On receipt of the dispatch slip Coen telephoned Wild and rejected the dispatch. He explained to Wild that he had previously worked for Lewis & Taylor, the employer that had the contract with KRON to perform its janitorial work, and had not been paid by Lewis & Taylor for his work.<sup>7</sup>

Coen's janitor job with the Employer for ACT during ACT's 1989-1990 season ended in late June 1990, when ACT concluded its season.

During the summer of 1990, from July until late in September, when Coen resumed work for the Employer at ACT for ACT's 1990-1991 season, he worked as a janitor for the Employer for approximately 36 days in July and August at the Orpheum Theater for the run of the play "Oba Oba."

In the first week of September 1990, Coen went to Respondent's hiring facility and told Assistant Dispatcher Ybarreche he was looking for a job and asked to be dispatched to the Golden Gate Theater to work as a janitor for the Employer for the run of the play which was scheduled to open at that theater. Coen also informed Ybarreche that if there was no job available for him at the Golden Gate Theater that he would like Respondent to refer him to a job at the Bay Meadows Race Track or to any other vacation or fill-in jobs available during September 1990. Ybarreche wrote down his request and stated she would put it on Wild's desk.

Early in September 1990, the Employer's district manager, Vera Barnard, telephoned Respondent's hiring facility and asked that four janitors be dispatched to the Employer to work at the Golden Gate Theater. Barnard spoke to Ybarreche and, in making this request, gave her the names of each of the four janitors she wanted Respondent to dispatch. One of the persons whom she named was Coen. In response to Barnard's request that Coen be referred to this job, Ybarreche told Barnard: "You know how they feel about [Coen]. I don't know if he'll be able to go out." Barnard answered, "fine, just do what you can."<sup>8</sup>

In September 1990, pursuant to Barnard's aforesaid request, Respondent dispatched four janitors to the Employer

to work at the Golden Gate Theater. Coen was not among those dispatched.

In September 1990, after discovering that janitors other than himself had been dispatched by Respondent to the Employer to work at the Golden Gate Theater, Coen telephoned Wild and complained about Respondent's failure to dispatch him to that job. Coen asked Wild why he had not been dispatched by Respondent to the Golden Gate Theater inasmuch as he had previously spoken to Ybarreche and had requested that Respondent dispatch him there when the play opened. Wild replied that the crew of janitors had already been chosen for the Golden Gate Theater and were already at work there. Wild also indicated he was surprised to learn Coen was looking for a job and stated he did not know Coen had requested to be referred to the Golden Gate Theater and also stated that Coen's name had not been placed on Respondent's out-of-work list. Coen answered that he was looking for work and asked Wild to be dispatched to the Bay Meadows Race Track or to any other available job. Wild asked if Coen intended to go back to work for the Employer at ACT and asked if he should dispatch him to ACT. Coen stated he intended to return to work for the Employer at ACT at the start of ACT's 1990-1991 season. Wild told Coen he would dispatch him to a job at a television station, but that Coen usually declined those jobs. Coen explained that he did not like working for Lewis & Taylor, but would be willing to take a janitor's job at television stations for whom Lewis & Taylor did not perform the janitorial work. The conversation ended with Wild stating he would attempt to get Coen a job at the Bay Meadows Race Track and would get back to him. Subsequently, Wild failed to contact Coen concerning this matter.

### 3. Mohamed's unfair labor practice charge (Case 20-CB-8329)

Yhya Mohamed has been working as a janitor for 18 years. During the time material, he was not a member of Respondent. He had been a member from 1972 until 1985.

He filed the unfair labor practice charge, which is the subject of the instant proceeding, on April 11, 1990, and it was received by Respondent on April 13, 1990. In October 1987, he filed an unfair labor practice charge against Respondent in Case 20-CB-7404. In December 1987, based on that charge, a complaint issued alleging Respondent was refusing to permit Mohamed to view its hiring hall records, in violation of Section 8(b)(1)(A) of the Act. Subsequently, a hearing was held before an administrative law judge who, in pertinent part, found: On November 17, 1987, after having been informed by Respondent's president that Respondent's hiring hall had no work for him, Mohamed indicated he thought others had been dispatched out of order when he should have been dispatched and asked Respondent's president to furnish him a copy of Respondent's dispatches for the past 6 months; Respondent's president replied by informing Mohamed that Respondent could not give him this information without a court order and referred him to Respondent's attorney; and, when Mohamed attempted to reach Respondent's attorney by telephone, the attorney failed to return his several telephone calls. The judge, based on these findings, and Respondent's status as the employees' exclusive bargaining agent, concluded that Respondent had violated Section 8(b)(1)(A) of the Act by arbitrarily refusing to provide

<sup>7</sup>In rejecting the dispatch because Lewis & Taylor owed him money, Coen was referring to the fact that at one time in the past he had been employed by Lewis & Taylor as a foreman and Lewis & Taylor had refused to reimburse him for his services at the higher rate of pay set forth in the contract with Respondent for a foreman.

<sup>8</sup>The above description of Barnard's conversation with Ybarreche is based on Barnard's uncontradicted testimony. Barnard, whose testimonial demeanor was good, was a disinterested witness. Barnard initially testified that the job she spoke to Ybarreche about in early September 1990 and asked that Coen and three other named applicants be referred to was for a play to be staged at the Orpheum Theater. However, after refreshing her memory by looking at the Employer's business records, Barnard corrected her prior testimony; she testified, "I was wrong. It was the Golden Gate Theater."

Mohamed with copies of dispatches for a specified 6-month period and recommended that Respondent be ordered to cease and desist from "refusing arbitrarily to honor requests for information regarding referrals for employment by failing to provide Yhya Mohamed with copies of the dispatch slips reflecting dispatches from its hiring hall for a discrete 6-month period," and also recommended that Respondent, "upon request, provide Yhya Mohamed with copies of dispatch slips as he requested for the 6-month period preceding November 16 and 17, 1987." The Board in its Decision and Order in Case 20-CB-7404, issued on July 29, 1988, affirmed the judge's aforesaid findings and conclusions, and adopted her recommended Order. *Service Employees Local 9 (Blumenfeld Enterprises)*, 289 NLRB No. 1 (not published in bound volumes).

Late in February 1990, Robert Miguel, employed by the Employer as the janitor foreman at the Golden Gate Theater, informed Vera Barnard, the Employer's district manager, that he would be absent from work on March 10-11, 1990, because of his vacation and recommended he be replaced on those days by Mohamed, whom he explained had worked as a janitor for him previously at the Golden Gate Theater in February 1990 and had done a good job.

On February 23, 1990, Barnard sent a letter, dated February 23, 1990, to Ann Ybarreche, Respondent's assistant dispatcher, stating that the Employer requested Mohamed be dispatched as a janitor to the Golden Gate Theater to work on March 10-11, 1990, and explained to Ybarreche that Mohamed had been dispatched by Respondent to that theater on February 14, 1990, and had performed satisfactorily. Also, at about the same time as she sent this letter, Barnard telephoned Ybarreche and told her Miguel was going on vacation and because of this the Employer needed to replace him on the days he would be absent from work and wanted to replace him with Mohamed since Mohamed had worked at the Golden Gate Theater previously.

Respondent did not dispatch Mohamed to the Golden Gate Theater to work on March 10-11, as requested by Barnard. Instead, it dispatched another person to that job. No explanation was offered by Respondent to Barnard for Respondent's failure to honor Barnard's request and Barnard never asked for an explanation.

On or about March 9, 1990, Mohamed went to Respondent's hiring facility and spoke to dispatcher Wild about being dispatched, pursuant to Barnard's request, to the Golden Gate Theater. He informed Wild that Barnard had requested Respondent to refer him to the Golden Gate Theater for 2 days of work and told Wild he would like to be dispatched to that job. Wild replied that Respondent had already referred another applicant to that job. Mohamed protested that the Employer had specifically asked that he be dispatched. Wild answered, "I don't care. I just sen[t] somebody else."

It is undisputed that during the period from January through April 1990, Mohamed was registered for work with Respondent and that during this period he advised representatives of Respondent on several different occasions that he was seeking work through Respondent's hiring facility as a janitor. During this period Respondent dispatched him to two jobs; a 1-day job at the Golden Gate Theater in mid-February and to a television station on an unspecified date in February.

Prior to March 14, 1990, Mohamed was available for evening, as well as morning, employment. On about March 14, 1990, a labor organization, other than Respondent, dispatched him to a janitor's job with Golden State, a cleaning contractor, which required that he work during the evening hours. He has been employed by Golden State regularly—5 days each week—in the evenings from March 14, 1990, through the date of the hearing.

Subsequent to Mohamed's March 14, 1990 employment with Golden State, he still sought referrals from Respondent's hiring facility. However, he made it known to Respondent that because he was now regularly employed during the evening hours by Golden State, he was now only interested in being dispatched by Respondent to morning janitorial jobs. Dispatcher Wild generally responded by informing Mohamed that because he was not able to work evenings Respondent had no work for him since there were no morning jobs available to refer him to. However, as described infra, it is undisputed that on two different occasions Wild indicated to Mohamed that Mohamed's nonmembership in Respondent and his unfair labor practice charges against Respondent played a part in Respondent's failure to refer him for employment.

On March 16, 1990, Mohamed visited Respondent's hiring facility for the purpose of speaking to Wild about being referred to a job. Present was Negi Ahmed, Mohamed's friend. Ahmed intended to be away from the area for a while and, in Mohamed's presence, asked Wild to refer Mohamed to his janitor job for the period he would be absent while out of town. Wild told Ahmed that Mohamed should speak up for himself. Mohamed spoke up and told Wild he had come to Respondent's hiring facility previously in search of work and had been informed by Wild that there was no work for him and would be dispatched when something came up, but that Wild subsequently had refused to dispatch him to a job at the Golden Gate Theater even though the Employer had asked for him by name, and now Wild was apparently going to refuse to dispatch him as Ahmed's replacement. Mohamed asked "why?" Wild had not dispatched him to the Golden Gate Theater job and now did not want to refer him to a job as Ahmed's replacement. Wild answered by stating Mohamed was not a member of Respondent and had filed a charge against Respondent. Mohamed stated that he would pay his dues to Respondent, if that was what Wild wanted, and asked to see Respondent's dispatch records. In this last regard, Mohamed stated he felt he should be getting work from Respondent's hiring facility and stated he had a right to look at Respondent's dispatch records. Wild answered that Respondent's officials did not intend to let him see Respondent's dispatch records and told him if he wanted to see them he should have his lawyer come to Respondent's hiring facility and speak to Wild. The conversation ended with Wild telling Mohamed that Mohamed did not have the right to be in Respondent's hiring facility because he was not a member of Respondent and told him to "just get out." Mohamed left. Subsequently Mohamed returned to Respondent's hiring facility on several different occasions and was not refused entrance nor instructed to leave.

In April 1990, the date in April not specified in the record, Mohamed visited Respondent's hiring facility for the purpose of joining Respondent. He spoke to Assistant Dispatcher Ybarreche who, as described supra, also was Respondent's

sole clerical employee. He told Ybarreche he wanted to become a member of Respondent. Ybarreche told him he would have to pay \$100. Mohamed paid her the \$100. A few days later, when he returned to the facility, Ybarreche returned his \$100. She explained to him she had gotten herself into trouble by taking his money inasmuch as she was not supposed to take his money because he had filed a charge against Respondent.

On April 26, 1990, Mohamed went to Respondent's hiring facility to seek employment and, as he was entering the facility, met Wild, who was on his way out. As they crossed paths, Wild, who appeared to be angry when he spoke to Mohamed, remarked to Mohamed, "you went to the Labor Board to file a complaint."<sup>9</sup> Mohamed answered, "yes," and Wild stated that since Mohamed had filed a charge with the Board he would see him in court, that he did not intend to give him any work. Then when Mohamed asked, "there's no work for me," Wild answered, "no, I'll see you in court. You went to the [Board], you filed a charge, I'll see you in court."

On May 15, 1990, Mohamed sent a letter, dated May 15, 1990, to Wild requesting that he be allowed to review Respondent's "dispatch records for the past six months in order to find out why I have not been dispatched to jobs." On November 13, 1990, Mohamed sent Wild another letter dated November 13, 1990, which was identical in content to the above-described May 15 letter. Neither Wild nor anyone else, on behalf of Respondent, answered those letters. Respondent has not furnished Mohamed with the requested information nor is there evidence that Respondent has otherwise notified him that it is willing for him to review the requested dispatch records.

### B. Discussion

#### 1. Respondent refuses to refer Coen and Mohamed for employment with the Employer

A union may lawfully administer a referral system for the benefit of employers seeking workers and employees seeking jobs. *Teamsters Local 357 v. NLRB*, 365 U.S. 667, 672-677 (1961). However, where, as here, a union operates an exclusive job referral system, the union violates Section 8(b)(1)(A) and (2) of the Act if it fails or refuses to refer applicants for employment because of discriminatory considerations. *Id.* at 676-677. Accordingly, a union which operates an exclusive hiring facility violates Section 8(b)(1)(A) and (2) if it fails to dispatch an applicant to a job because the applicant challenges union policy, including union policy which requires the applicant to picket on the union's behalf, or fails to dispatch an applicant to a job because the applicant has filed an unfair labor practice charge against the union with the Board. See, e.g., *NLRB v. Operating Engineers Local 925*, 460 F.2d 589 (5th Cir. 1972); *Standard Fruit & Steamship Co.*, 211 NLRB 121 (1974); *Plumbers Local 17 v. NLRB*, 575 F.2d 585, 586 (6th Cir. 1978); *NLRB v. Shipbuilders*, 391 U.S. 418 (1968).

The record in this case, as described *supra*, establishes Respondent operates a hiring facility for the benefit of employ-

ers and employees and that pursuant to its collective-bargaining agreement with the Employer administers an exclusive referral system whereby the Employer is obligated to hire its theater janitors exclusively from Respondent's hiring facility. The General Counsel contends that on two occasions, once in August 1989 and again in September 1990, Respondent violated Section 8(b)(2) and (1)(A) of the Act by failing and refusing to refer Coen to the Employer because he refused to picket on Respondent's behalf. The General Counsel also contends Respondent violated Section 8(b)(1)(A) and (2) in March 1990 by failing and refusing to refer Mohamed to the Employer because he filed an unfair labor practice charge against Respondent with the Board.

Having found that in August 1989 and September 1990, Respondent failed and refused to dispatch Coen to work as a janitor at the Golden Gate Theater, as requested by the Employer, and having found that in March 1990 Respondent failed and refused to refer Mohamed to work as a janitor at the Golden Gate Theater, as requested by the Employer, and having found that during the times material Coen and Mohamed were registered for work at Respondent's exclusive hiring facility, the remaining question for decision is whether Respondent engaged in the aforesaid conduct because Coen refused Respondent's instruction to picket and because Mohamed filed an unfair labor practice charge against Respondent, as alleged by the General Counsel and disputed by Respondent. If Respondent failed to refer Coen and Mohamed for these reasons, its conduct violated Section 8(b)(2) and (1)(A) of the Act. E.g., *Plasterers Local 908*, 185 NLRB 879 (1970), and *Standard Fruit & Steamship Co.*, 211 NLRB 121 (1974). I am of the opinion, for the reasons below, that the General Counsel has established a *prima facie* case of unlawful motivation that the Respondent has failed to rebut, thus Respondent's alleged misconduct violated Section 8(b)(2) and (1)(A) of the Act.<sup>10</sup>

#### a. Respondent violated Section 8(b)(2) and (1)(A) of the Act by refusing to dispatch Coen to the Employer

The record contains *prima facie* proof that it was Respondent's animus toward Coen for refusing to obey Respondent's instruction to picket, which motivated Respondent's decision to refuse to refer Coen to the Golden Gate Theater in August 1989 and September 1990, even though the Employer specifically requested Respondent to refer him to those jobs. The following factors, viewed in their totality, support this inference.

It is undisputed that during the times material, Respondent was hostile toward Coen because on several occasions between 1982 and 1989 he refused to obey Respondent's instruction to picket the United Artists' theaters in support of Respondent's labor dispute with that employer. It is also undisputed that during June and July 1989 Coen once again refused Respondent's order to picket a United Artists theater, and that the Respondent's business representative responsible for coordinating Respondent's picketing of the United Artists theaters filed an intraunion charge against Coen in July 1989

<sup>9</sup>As I have found *supra*, Mohamed filed his charge in this case against Respondent on April 11, 1990, and it was received by Respondent on April 13, 1990.

<sup>10</sup>In analyzing Respondent's motivation for failing and refusing to refer Coen and Mohamed, pursuant to the Employer's requests, I have been guided by the Board's decision in *Wright Line*, 251 NLRB 1083 (1980). See *Teamsters Local 287 (Consolidated Freightways)*, 300 NLRB 539, 548 fn. 20 (1990); *Operating Engineers Local 77 (Potts & Callahan)*, 298 NLRB 8, 10 fn. 4 (1990).

charging him with violating Respondent's constitution and bylaws by failing to perform his picket line assignment at a United Artists theater during the months of June and July 1989.

Respondent's officers indicated to Coen and another member of Respondent, who, like Coen, had disobeyed Respondent's order to picket a United Artists theater, that Respondent intended to interfere with their employment if they continued to refuse to picket. In August 1987 Respondent's vice president, Cataldo, warned Coen that if he disobeyed Respondent's order to picket he would not be allowed to work, and, in 1989 Respondent's member Francis Holland was warned by Respondent's president Huber that Respondent would interfere with his employment, if he did disobey Respondent's order to picket.

That Coen's refusal to obey Respondent's order to picket was a consideration relied on by Respondent in failing and refusing to dispatch him to the Employer's August 1989 and September 1990 Golden Gate Theater jobs, is further demonstrated by Assistant Dispatcher Ybarreche's admission to Coen in June 1989 that, "it'd be much easier for me to get you work if you return to the picket line."

Also relevant in assessing Respondent's motivation for not referring Coen to the Employer's August 1989 and September 1990 Golden Gate Theater jobs, despite District Manager Barnard's specific request that he be dispatched to those jobs, is Assistant Dispatcher Ybarreche's admissions to Barnard that in view of Respondent's hostility toward Coen for not picketing on Respondent's behalf, Ybarreche did not know if Respondent would dispatch Coen, as requested by Barnard, to the Golden Gate Theater. In this regard, it is undisputed that when, in August 1989 and September 1990, Barnard asked Ybarreche to refer Coen to the Golden Gate Theater, Ybarreche replied by stating, "You know how they feel about [Coen]. I don't know if he'll be able to go out." The record establishes that when Ybarreche remarked, "you know how they feel about [Coen]," that the only conceivable thing she could have been referring to was Respondent's admitted hostility toward Coen for refusing to obey Respondent's order to picket United Artists' theaters.<sup>11</sup>

The inference that Respondent was unlawfully motivated when it ignored District Manager Barnard's requests that Coen be referred to the Golden Gate Theater in August 1989 and September 1990 is further supported by Respondent's deviation from its past practice in similar situations. It is undisputed that in the past when Barnard needed someone to

fill in as a janitor at either the Curran or Golden Gate Theaters and asked Respondent to dispatch a particular applicant, whom she named, that prior to Barnard's August 1989 request for Coen, Respondent had complied with Barnard's request on each occasion, if the applicant requested was available for work. Respondent offered no evidence to explain why it deviated from this practice in the instant case.

Lastly, the inference that Respondent's failure to dispatch Coen to the Golden Gate Theater in September 1990 was unlawfully motivated is further supported by the false reason advanced by Respondent when it gave Coen an explanation for not dispatching him to that job. In September 1990 when Coen complained to Dispatcher Wild about Respondent's failure to dispatch him to the Golden Gate Theater job and asked why he had not been dispatched to that job, Wild answered he had dispatched another applicant to the job and indicated he had done so because he had not known Coen was looking for work or wanted to be dispatched to the Golden Gate Theater job, and also remarked that Coen's name had not even been placed on Respondent's out-of-work list. This explanation is false inasmuch as it is undisputed that previously, during the first week in September 1990, Coen had visited Respondent's hiring facility and told Assistant Dispatcher Ybarreche he was looking for work and specifically asked to be dispatched to the Golden Gate Theater to work for the Employer for the run of a play which he explained was scheduled to open at that theater. Ybarreche replied by reducing his request into writing and stating she would place it on Wild's desk. Presumably Ybarreche did this and Wild received the request. Respondent presented no evidence that this was not the case. Therefore, the reasons which Wild offered Coen to justify the referral of another person instead of Coen to the September 1990 Golden Gate Theater job were false, and this lends further support to the inference that Wild's failure to refer Coen to that job was unlawfully motivated.

Considering Respondent's animosity toward Coen for refusing to picket United Artists' theaters on Respondent's behalf; considering that during the time material Coen once again disobeyed Respondent's order to picket a United Artists theater; considering Respondent indicated to Coen and to another member of Respondent that Respondent intended to interfere with their employment if they continued to refuse to picket on Respondent's behalf;<sup>12</sup> considering Assistant Dispatcher Ybarreche's admission to Coen that it would be much easier for her to refer him to jobs if he obeyed Respondent's order to picket; considering Ybarreche's further admission to the Employer's district manager, Barnard, that because of Respondent's hostility toward Coen for not picketing on its behalf, that she did not know whether Respondent would dispatch Coen to the Golden Gate Theater in August 1989 and September 1990, as requested by Barnard; considering that Dispatcher Wild offered a false reason to Coen to justify his failure to refer Coen to the Employer's Golden Gate Theater job in September 1990; and, considering Respondent's deviation from its past practice of refer-

<sup>11</sup> As set forth supra, in evaluating Respondent's motivation for not dispatching Coen to the Employer's Golden Gate Theater jobs in August 1989 and September 1990, I relied, among other things, on various remarks made by Respondent's assistant dispatcher, Ybarreche, to Coen and Barnard, in response to their requests that Coen be dispatched by the Respondent to the Employer. I am of the opinion that there is a sufficient basis for inferring that Ybarreche, in responding to their requests, was speaking with actual knowledge of Respondent's motivation because she was employed by Respondent as its assistant dispatcher and, as such, with Dispatcher Wild was responsible for the operation of Respondent's hiring facility. The record also reveals that the majority of Coen's referral requests were made by Coen to Ybarreche who communicated his requests to Wild and that each one of Barnard's requests to Respondent to refer Coen was communicated by her to Ybarreche, who, presumably during the normal course of business, relayed those requests to Dispatcher Wild. In view of all the above circumstances, it is appropriate to infer that Wild informed his assistant, Ybarreche, of his reason or reasons for not referring Coen to the Golden Gate Theater in August 1989 and September 1990, despite the fact that Barnard had specifically asked that Coen be referred to those jobs.

<sup>12</sup> There is no evidence that Respondent has interfered with or attempted to interfere with Coen's or Holland's regular employment with the Employer at ACT. This, however, does not detract from the fact that Respondent's president and vice president were sufficiently angered by Coen's and Holland's refusals to obey Respondent's orders to picket, so as to threaten them with the loss of employment if they continued to refuse to picket.

ring those applicants whom Barnard had specifically requested by name—I find that, considering all of these circumstances, the General Counsel has established that when Respondent ignored Barnard's August 1989 and September 1989 requests for Coen's dispatch to the Golden Gate Theater, and instead dispatched other applicants in Coen's place, that Respondent's conduct was motivated at least in part by its animosity toward Coen for having refused to obey Respondent's order to picket on Respondent's behalf at United Artists' theaters.

In reaching this conclusion, I considered that Coen has not been fined or otherwise disciplined by Respondent for refusing to picket and there is no evidence Respondent has attempted to interfere with his regular employment with the Employer for ACT. Quite the opposite, during the periods Coen has refused to picket, Respondent has referred him to employment with the Employer for ACT or otherwise cleared him for such employment. I also considered that during the summers of 1989 and 1990, when Coen was not employed at ACT, Respondent referred him to three different fill-in jobs: In July 1989, Respondent did not object to his employment by the Employer at the Orpheum Theater and issued the Employer a slip dispatching him to that job; in August 1989, after Coen protested to Wild about Respondent's failure to dispatch him to the Golden Gate Theater, Wild referred him to a job at a television station; and, in July 1990 Respondent dispatched him to a job at the Orpheum Theater with the Employer. Nonetheless, on balance, I am of the opinion that the foregoing considerations are insufficient to outweigh the other considerations, described *supra*, which I have found warrant the inference that Respondent's animus toward Coen for refusing to picket on Respondent's behalf was a motivating factor in Respondent's decision to ignore the Employer's August 1989 and September 1990 requests that he be referred by Respondent to fill in jobs at the Golden Gate Theater.

Having found that the record contained *prima facie* proof that by failing and refusing to refer Coen from its exclusive hiring facility to jobs with the Employer at the Golden Gate Theater in August 1989 and September 1990, that Respondent violated Section 8(b)(1)(A) and (2) of the Act, the burden shifted to Respondent to show that what appeared to be illegal motivation on the part of Respondent was in fact justified by a legitimate reason or reasons and that based on this legitimate reason or reasons Respondent would have failed to refer Coen to work for the Employer at the Golden Gate Theater in August 1989 and September 1990, even absent its animus toward Coen for refusing to picket. I find, for the reasons below, Respondent failed to rebut the General Counsel's *prima facie* case.

Respondent called no witnesses in an effort to justify or otherwise explain why, despite the Employer's August 1989 and September 1990 request that Coen be dispatched by Respondent to the Golden Gate Theater, Respondent dispatched other job applicants in Coen's place to those jobs.<sup>13</sup> The only

record evidence colorably suggesting a legitimate reason for Respondent's treatment of Coen, concerns remarks made by officials of Respondent to Coen in August 1989, when, during his hearing before the Respondent's executive board, Coen accused Respondent of not dispatching him to the Employer's August 1989 Golden Gate Theater job because of its animosity toward him for not picketing. In response, officials of Respondent made the following remarks: Secretary-Treasurer Kelly told Coen Respondent had not been obligated to dispatch him to that job, even though the Employer had asked for him by name, so long as Respondent applied the same rules and practices to Coen as it did to all of the other hiring facility registrants; and, either Kelly or Vice President Cataldo informed Coen that the registrants referred by Respondent to the Golden Gate Theater job had not been employed as much as Coen, inasmuch as Coen had recently been employed for 9 months. However, Respondent presented no evidence that when it failed to honor the Employer's August 1989 request that Coen be dispatched to the Golden Gate Theater, that it applied its hiring facility's rules uniformly and treated Coen just like other applicants have been treated. Nor did it present evidence that its reason for failing to honor the Employer's request was that other applicants had been unemployed for a longer period than Coen. Instead, Respondent chose not to present evidence to rebut the General Counsel's case, and there is otherwise no record evidence which establishes that even absent Respondent's animus toward Coen for refusing to picket on Respondent's behalf, that Respondent would have ignored the Employer's August 1989 and September 1990 requests that he be dispatched to jobs at the Golden Gate Theater, and not have referred him to those jobs.

Based on the foregoing, I find Respondent failed and refused to dispatch Coen from its exclusive hiring facility in August 1989 and in September 1990 to jobs with the Employer at the Golden Gate Theater, and engaged in this conduct because of its animosity toward Coen for having refused Respondent's order to picket a United Artists theater on its behalf, and that by failing and refusing to refer Coen to those jobs that the Respondent engaged in unfair labor practices within the meaning of Section 8(b)(2) and (1)(A) of the Act.

In concluding that Respondent's refusal to refer Coen to the Employer's Golden Gate Theater job in August 1989 violated Section 8(b)(2) and (1)(A) of the Act, as alleged in the complaint issued in Case 20-CB-8239, I note that the underlying charge in that case alleges only a violation of Section 8(b)(1)(A) of the Act and Respondent's answer to that complaint alleges, as an affirmative defense, that the complaint's allegations are time-barred under Section 10(b) of the Act. Therefore, the issue raised by this affirmative defense is whether a violation of Section 8(b)(2), as well as Section 8(b)(1)(A), may be found in Case 20-CB-8239, when Section 8(b)(2) of the Act was not alleged to be an unfair labor practice in the underlying charge.<sup>14</sup>

<sup>13</sup> In its posthearing brief Respondent argues that the language of the hiring agreement between Respondent and the Employer precluded the Employer from asking for job applicants by name, when it requested referrals from Respondent's hiring facility. I disagree. Although the hiring agreement, set forth in detail *supra*, does not require Respondent to dispatch the specific applicant named by the Employer, it does not preclude the Employer from requesting Respondent to refer a specific applicant named by the Employer and, as I have found *supra*, until Respondent's August 1989 refusal to refer Coen, the Re-

spondent's practice in similar situations has been to dispatch the applicant named by the Employer's district manager, provided that the specified applicant was available for employment.

<sup>14</sup> There is no due process issue because the 8(b)(2) allegation, as well as the 8(b)(1)(A) allegation, was included in the complaint and notice of hearing which issued several months prior to the hearing, thereby affording Respondent ample notice of the 8(b)(2) allegation and a meaningful opportunity to defend against that allegation.

In this regard the law is settled that since a charge merely sets in motion the Board's investigatory machinery and does not preclude the Board from dealing with unfair labor practices which are related to those alleged in the charge (*NLRB v. Fant Milling Co.*), 360 U.S. 301, 306-309 (1959), a complaint may contain allegations related to the same subject matter as that covered in the charge, even though the alleged violation involves a different section of the Act, so long as it arose out of and was related to the same situation as alleged to be unlawful in the timely charge. See *NLRB v. Hotel Conquistador*, 398 F.2d 430, 433 (9th Cir. 1968); *Great Plains Steel Corp.*, 183 NLRB 968, 974-975 (1970); *Pergament United Sales v. NLRB*, 920 F.2d 130 (2d Cir. 1990). The relationship between the unfair labor practice allegation set forth in the charge and a complaint allegation, not set forth in the charge, "need be close enough only to negate the possibility that the Board is proceeding on its own initiative rather than pursuant to a charge." *NLRB v. Central Power & Light Co.*, 425 F.2d 1318, 1321 fn. 3 (5th Cir. 1970). Here the complaint's 8(b)(2) allegation is "closely related" to the 8(b)(1)(A) allegation in the underlying charge, because: the 8(b)(1)(A) and (2) allegations involved the same underlying legal theory, namely, whether Respondent was unlawfully motivated when it refused to dispatch Coen to the Employer's Golden Gate Theater job in August 1989; the 8(b)(2) allegation arose from the identical factual situation and sequence of events as the 8(b)(1)(A) allegation; thus, it is readily apparent that Respondent would rely on the same or similar defenses to both allegations. See generally *Redd-I, Inc.*, 290 NLRB 1115 (1988). It is for these reasons that Respondent's contention that the complaint's allegations in Case 20-CB-8239 are time-barred under Section 10(b) of the Act is without merit.<sup>15</sup>

*b. Respondent violated Section 8(b)(2) and (1)(A) of the Act by failing to dispatch Mohamed to the Employer to work at the Golden Gate Theater on March 10-11, 1990*

The record contains prima facie proof that it was Respondent's animus toward Mohamed for filing an unfair labor practice charge with the Board against Respondent which motivated Respondent's refusal to refer to Mohamed, as requested by the Employer, to the Golden Gate Theater to work there on March 10-11, 1990. The following factors, viewed in their totality, support this inference.

Respondent was hostile toward Mohamed for having filed his charge in Case 20-CB-7404 against Respondent, which resulted in the Board issuing a decision in that case in July 1988 finding Respondent guilty of violating Section 8(b)(1)(A) of the Act by refusing to provide Mohamed with copies of hiring facility dispatch slips, as alleged in Mohamed's charge. Thus, on March 16, 1990, as described in detail supra, Respondent's dispatcher, David Wild, admitted to Mohamed that one of Wild's reasons for failing to refer Mohamed to the March 10-11, 1990 Golden Gate Theater job, as requested by the Employer, was that Mohamed had filed a charge against Respondent in Case 20-CB-7404.

The inference that Respondent was antagonistic toward Mohamed for filing this charge is bolstered further by Respondent's reaction to the charge he filed on April 11, 1990, in the instant case. In this regard, as described in detail supra, in April 1990, apparently after Mohamed filed his most recent charge, Assistant Dispatcher Ybarreche explained to him she could not accept the money he had given her to join Respondent because he had filed a charge against Respondent, and later that month, on April 26, as described in detail supra, Dispatcher Wild told Mohamed that since he had filed a charge against Respondent, Wild did not intend to give him any work, but instead would see him in court. Since Respondent reacted in this manner to the filing of Mohamed's most recent charge against Respondent, it is reasonable to infer it was just as antagonistic toward him for having filed his earlier charge which had resulted in a Board Decision and Order finding Respondent guilty of violating the Act.

Dispatcher Wild's March 16, 1990 statement to Mohamed that his failure to refer him to the Employer's March 10-11 Golden Gate Theater job was motivated by Mohamed's lack of membership in Respondent and his having filed an unfair labor practice charge against Respondent, not only constitutes persuasive evidence that Wild was angry at him for having filed the charge, it also constitutes an admission by Wild that the filing of the charge by Mohamed was a motivating factor in Wild's decision not to refer him to the Employer's March 10-11 Golden Gate Theater job.

The inference that Respondent was unlawfully motivated when, despite the Employer's request, it failed to dispatch Mohamed to the Golden Gate Theater on March 10 to work there for 2 days, is further supported by Respondent's deviation from its past practice in similar situations. It is undisputed that in the past when Respondent's district manager Barnard needed someone to fill in as a janitor at either the Curran or Golden Gate Theaters and asked Respondent to dispatch a particular applicant, whom she named, that Respondent always complied with Barnard's request except where, as I have found supra, Respondent failed to refer Coen for an unlawful reason. Respondent offered no evidence to explain why it deviated from its usual practice in Mohamed's case.

Considering Respondent's animosity toward Mohamed for having filed an unfair labor practice charge with the Board against Respondent; considering Dispatcher Wild's admission to Mohamed that Wild's failure to refer him to the Golden Gate Theater to work March 10-11, 1990, was motivated in part by Respondent's animosity toward him for having filed that charge; and, considering Respondent's deviation from its practice of referring those applicants whom District Manager Barnard specifically request by name—I find that, considering all of these circumstances, the General Counsel established that when Respondent ignored Barnard's request that Mohamed be referred to the Golden Gate Theater to work for the Employer on March 10-11, 1990, and instead dispatched another applicant in his place, Respondent's conduct was motivated at least in part by its animosity toward Mohamed for filing an unfair labor practice charge with the Board against Respondent.

In so concluding, I considered that in February 1990 Respondent dispatched Mohamed to two jobs; a 1-day job for the Employer at the Golden Gate Theater and to another em-

<sup>15</sup> Likewise without merit is Respondent's further contention that the complaint issued in Case 20-CB-8329 is time barred under Sec. 10(b). This contention, which was raised as an affirmative defense in its answer to that complaint, was not pressed in Respondent's posthearing brief, and has no colorable support in the record.

ployer to work as a janitor at a television station. Nonetheless, on balance, I am of the opinion that the foregoing circumstances are insufficient to outweigh the other circumstances, described supra, which I have found warrant the inference that Respondent's animus toward Mohamed for filing a charge with the Board against Respondent in Case 20-CB-7404 was a motivating factor in Respondent's decision to ignore the Employer's request that he be referred to the Employer to work at the Golden Gate Theater on March 10-11, 1990.

Having found that the record evidence contained prima facie proof that by failing and refusing to dispatch Mohamed from its exclusive hiring facility to work for the Employer at the Golden Gate Theater on March 10-11, 1990, Respondent violated Section 8(b)(2) and (1)(A) of the Act, the burden shifted to Respondent to prove that what appeared to be illegal motivation on the part of Respondent was in fact justified by a legitimate reason or reasons and that based on this legitimate reason or reasons, Respondent would have failed to refer Mohamed to work for the Employer at the Golden Gate Theater on March 10-11, 1990, even absent its animus toward him for filing an unfair labor practice charge with the Board against Respondent.

Respondent failed to rebut the General Counsel's prima facie case. It did not call a single witness to justify or explain why, despite the Employer's request that Mohamed be referred to the Golden Gate Theater on March 10-11, 1990, Respondent dispatched another job applicant in his place. Nor did the record otherwise contain evidence which establishes Respondent would have ignored the Employer's request and not referred Mohamed to work for the Employer at the Golden Gate Theater on March 10-11, 1990, even absent Respondent's animus toward for filing an unfair labor practice charge with the Board against Respondent.

Based on the foregoing, I find that in violation of Section 8(b)(2) and (1)(A) of the Act, Respondent failed and refused to dispatch Mohamed from its exclusive hiring facility in March 1990 to work for the Employer at the Golden Gate Theater on March 10-11, 1990, because of its animosity toward him for having filed an unfair labor practice charge with the Board against Respondent.

## 2. Respondent tells Mohamed to leave its hiring facility because he is not a member of Respondent

The complaint in Case 20-CB-8329 alleges that "on or about April 26, 1990, Respondent, by Wild, denied Mohamed access to its hiring hall," thereby violating Section 8(b)(1)(A) and (2) of the Act. In support of this allegation the General Counsel, as described in detail supra, established that on March 16, 1990, when Mohamed visited Respondent's hiring facility and spoke to Dispatcher Wild about being dispatched to a job, Wild informed him that his lack of membership in Respondent was one of the reasons Wild had failed to dispatch him to jobs, and abruptly ended his conversation with Mohamed by stating that Mohamed did not have the right to be present in Respondent's hiring facility because he was not a member of Respondent, and ordered him to leave the hiring facility, which Mohamed did.

Since a collective-bargaining agent is required to represent all members of the bargaining unit, irrespective of their membership in the Union, it is a violation of Section 8(b)(1)(A) of the Act for a union to deny to unit employees

access to an exclusive hiring facility because of their status as nonmembers of the union. See *American Postal Workers (Postal Service)*, 300 NLRB 34 (1990). Accordingly, Respondent violated Section 8(b)(1)(A) of the Act on March 16, 1990, when hiring hall Dispatcher Wild told Mohamed to leave Respondent's hiring facility and explained to Mohamed he was being denied access to the hiring facility because he was not a member of Respondent.

In concluding Respondent violated Section 8(b)(1)(A) by telling Mohamed he was being denied access to Respondent's hiring facility because he was not a member of Respondent, I considered that when Mohamed subsequently visited the hiring facility that he was not denied access or instructed to leave. Nonetheless, I am persuaded that Dispatcher Wild's March 16, 1990 instruction to Mohamed to leave the hiring facility, with an explanation that he was being denied access to the facility because he was not a member of Respondent, was the type of conduct reasonably calculated to restrain and coerce Mohamed from exercising his statutory right to refrain from becoming a member of Respondent,<sup>16</sup> and for this reasons violated Section 8(b)(1)(A), even though Respondent did not subsequently refuse Mohamed access to Respondent's hiring facility.

I also considered that the complaint alleges that Wild denied Mohamed access to its hiring facility, whereas the evidence is that although Dispatcher Wild told Mohamed that Mohamed was being denied access to the facility because he was not a member of Respondent, that Respondent did not thereafter deny Mohamed access to the facility. However, I am of the opinion that the General Counsel's proof (Respondent told Mohamed he was being denied access to the hiring facility because he lacked membership in Respondent), is comprehended by the language of the complaint (Respondent denied Mohamed access to its hiring facility). I am also of the opinion that the date of the violation found herein is likewise comprehended by the language of the complaint. See *Vermont Marble Co.*, 301 NLRB 103, 104 fn. 8 (1991), where the Board held that even if it were to conclude that the unfair labor practice found in that case did not actually occur until May 31, the Board would find it was comprehended by the language of the complaint, which alleged that the unfair labor practice occurred "on or about April 21."

## 3. Respondent denies Mohamed's request for job referral information

The complaint in Case 20-CB-8329 alleges that since on or about April 11, 1990, and continuing thereafter, Respondent arbitrarily refused to permit Mohamed to view Respondent's hiring facility's records showing the names of applicants it referred to jobs and the names of employers to whom they were referred, and further alleges that by engaging in this conduct Respondent violated Section 8(b)(1)(A) of the

<sup>16</sup> As a matter of fact, in April 1990, shortly after Dispatcher Wild's March 16, 1990 instruction to Mohamed to leave the hiring facility because he was not a member of Respondent, Mohamed tried to join Respondent but was informed by Assistant Dispatcher Ybarreche that she could not accept the money he had given her to join because he had filed a charge with the Board against Respondent. I note Respondent could not have lawfully required Mohamed to become a member of Respondent pursuant to its union-security agreement with the Employer inasmuch as there is no showing that Mohamed had been employed by the Employer for the requisite number of days.

Act. The theory of this allegation is based on the settled principle that a union breaches its duty of fair representation, in violation of Section 8(b)(1)(A) of the Act, when it arbitrarily denies a request for job referral information made by an employee-applicant, when that request is reasonably directed toward ascertaining whether the employee-applicant has been fairly treated with respect to obtaining job referrals to employers whose employees the union represents. *NLRB v. Operating Engineers Local 139*, 796 F.2d 985, 992-994 (7th Cir. 1986); *Carpenters Local 608 v. NLRB*, 811 F.2d 149 (2d Cir. 1987); *Operating Engineers Local 324 (Michigan Chapter, AGC)*, 226 NLRB 587 (1976).

In the instant case it is undisputed that Mohamed requested Respondent to furnish him with certain relevant job referral information so he could ascertain whether he had been fairly treated by Respondent with respect to his requests for job referrals from Respondent's exclusive hiring facility, and that Respondent arbitrarily refused to comply with his information request. In this regard, the record reveals the following. On March 16, 1990, David Wild, the dispatcher of Respondent's hiring facility, indicated to Mohamed that Mohamed had not been dispatched by Respondent to the Employer's March 10-11, 1990 job and that Respondent was not favorably disposed to dispatch him to a job as a fill-in for his friend Ahmed, because Mohamed was not a member of Respondent and had filed a charge against Respondent with the Board. Mohamed responded by indicating he felt he should have been dispatched to jobs by Respondent and asked Wild to show him Respondent's dispatch records. Wild refused to show him the records and told him if he wanted to view the records Mohamed's lawyer should visit Respondent's office and speak to Wild. Subsequently, in mid-May and mid-November 1990, Respondent received letters dated May 15 and November 13, respectively, from Mohamed which asked that he be allowed to review Respondent's dispatch records for the past 6 months in order to find out why he had not been dispatched to jobs. Respondent did not answer those letters and offered no reason to Mohamed for its refusal to comply with the request. Nor did Respondent offer any justification during this proceeding for its refusals to comply with Mohamed's requests to view its dispatch records in order to ascertain why he had not been dispatched to jobs. Rather, during the hearing in this case (Tr. 266-267) and in its posthearing brief (Br. 11), Respondent conceded that by refusing to permit Mohamed to view Respondent's dispatch records, as he requested, Respondent violated Section 8(b)(1)(A) of the Act, as alleged in the complaint.

Based on the foregoing, I find Respondent on March 16, 1990, and again in mid-May and mid-November 1990, arbitrarily refused to furnish Mohamed with job referral information in violation of Section 8(b)(1)(A) of the Act.

#### CONCLUSIONS OF LAW

1. By failing and refusing to dispatch Coen from its exclusive hiring facility in August 1989 and in September 1990 to jobs with the Employer at the Golden Gate Theater because of Respondent's animosity toward him for having refused Respondent's order to picket a United Artists theater, Respondent engaged in unfair labor practices within the meaning of Section 8(b)(2) and (1)(A) of the Act.

2. By failing and refusing to dispatch Mohamed from its exclusive hiring facility in March 1990 to work for the Em-

ployer at the Golden Gate Theater on March 10-11, 1990, because of Respondent's animosity toward him for having filed an unfair labor practice charge against Respondent with the Board, Respondent engaged in unfair labor practices within the meaning of Section 8(b)(2) and (1)(A) of the Act.

3. By informing Mohamed on March 16, 1990, that he was being denied access to its exclusive hiring facility because he was not a member of Respondent, Respondent engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. By arbitrarily refusing to furnish Mohamed with job referral information on March 16, 1990, and in mid-May and mid-November 1990, Respondent engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent violated Section 8(b)(2) and (1)(A) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I am of the opinion that a broad cease-and-desist order is warranted because Respondent's arbitrary refusal to furnish Mohamed with job referral information on three different occasions in 1990 constituted not just a violation of Section 8(b)(1)(A) of the Act, as found supra, but was also a willful violation of the Board's Decision and Order issued on July 29, 1988, in Case 20-CB-7404, wherein the Board held that Respondent violated Section 8(b)(1)(A) in November 1987 by arbitrarily refusing to furnish Mohamed with job referral information. *Service Employees Local 9 (Blumenfeld Enterprises)*, 289 NLRB No. 1. In addition to willfully ignoring the Board's Decision and Order issued in Case 20-CB-740, by continuing to refuse to provide Mohamed with job referral information in violation of Section 8(b)(1)(A) of the Act, as found supra, Respondent further violated Section 8(b)(1)(A), as well as Section 8(b)(2), by retaliating against Mohamed for filing the charge in Case 20-CB-7404, when in March 1990 Respondent refused to refer him for employment with the Employer, and, as found supra, during the same time period violated Section 8(b)(1)(A) by informing Mohamed that he was being denied access to its exclusive hiring facility because he was not a member of Respondent. Additionally, as found supra, Respondent violated Section 8(b)(2) and (1)(A) by refusing to refer Coen for employment with the Employer in August 1989 and September 1990 because of his protected concerted activity. In view of Respondent's proclivity to violate the Act and the egregious nature of the violations found, in particular Respondent's retaliation against Mohamed for having filed the charge which resulted in the Board's Decision and Order in Case 20-CB-7404 against Respondent, I am persuaded that a broad cease-and-desist order is warranted in this case.

I shall also order the Respondent to make employees Yhya Mohamed and James Coen whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful failure to dispatch Mohamed to work for the Employer at the Golden Gate Theater on March 10-11, 1990, and its unlawful failure to dispatch Coen to work for the Em-

ployer at the Golden Gate Theater in August 1989 and September 1990. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*.<sup>17</sup>

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>18</sup>

### ORDER

The Respondent, Theatre and Amusement Janitors Union Local 9, Service Employees International Union, AFL-CIO, San Francisco, California, its officers, agents, and representatives, shall

#### 1. Cease and desist from

(a) Refusing to refer or dispatch employees from its exclusive hiring facility because they exercise their rights under Section 7 of the Act, including but not limited to their right to file a charge against Respondent with the Board and their right to refuse to obey Respondent's request to picket an employer on Respondent's behalf.

(b) Causing or attempting to cause employers, including the Employer, to discriminate against James Coen and Yhya Mohamed, or any other employees, members, job applicants, or registrants, by discriminatorily refusing to refer or dispatch them to the Employer, or to any other employer, pursuant to the operation of its exclusive hiring facility or referral system.

(c) Arbitrarily denying employees the right to review Respondent's hiring facility records when such a request is reasonably related to an alleged failure by Respondent to properly refer such employees to jobs.

(d) Informing employees that they are being denied access to Respondent's hiring facility because they are not members of Respondent.

(e) In any other manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act.

#### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make James Coen and Yhya Mohamed whole for any loss of earnings and benefits that they may have suffered because Mohamed was unlawfully denied referral and dispatch to employment with the Employer at the Golden Gate Theater on March 10-11, 1990, and because Coen was unlawfully denied referral and dispatch to employment with the Employer at the Golden Gate Theater in August 1989 and September 1990, in the manner set forth in the remedy section of the decision.

(b) Honor requests by Yhya Mohamed to view Respondent's hiring facility records where such a request is related to the Respondent's alleged failure to properly refer Mohamed for employment, including but not limited to those

requests made by Mohamed's letters to Respondent dated May 15 and November 13, 1990.

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all hiring records, dispatcher lists, referral slips, and other documents necessary to analyze and compute the amount of backpay due Yhya Mohamed and James Coen.

(d) Post at its business office, hiring facility, and meeting places in San Francisco, California, copies of the attached notice marked "Appendix."<sup>19</sup> Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members and employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Additional copies of the attached notice marked "Appendix" shall be signed by an authorized representative of Respondent, and forthwith returned to the Regional Director for Region 20 for posting by the Employer, it being willing, at its places of business in San Francisco, California, where notices to its employees are customarily posted.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>19</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

### APPENDIX

#### NOTICE TO EMPLOYEES AND MEMBERS

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

#### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to refer or dispatch you for employment from our hiring facility because you exercise your rights under Section 7 of the National Labor Relations Act, including but not limited to your right to file a charge against us with the National Labor Relations Board and your right to refuse to obey our request to picket an employer on our behalf.

WE WILL NOT cause or attempt to cause employers, including American Building Maintenance Company, to discriminate against James Coen and Yhya Mohamed, or any other employees, members, job applicants, or registrants, by discriminatorily refusing to refer or dispatch them to American Building Maintenance Company, or to any other employer, pursuant to the operation of its exclusive hiring facility or referral system.

WE WILL NOT arbitrarily deny you the right to review our hiring facility's records, when such a request is reasonably related to our alleged failure to properly refer you to jobs.

<sup>17</sup>283 NLRB 1173 (1987). Interest will be computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

<sup>18</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

WE WILL NOT tell you that you are being denied access to our hiring facility because you are not a member of our organization.

WE WILL NOT in any other manner restrain or coerce you in the exercise of the rights guaranteed you in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act.

WE WILL make James Coen and Yhya Mohamed whole for any loss of earnings and benefits that they may have suffered because we unlawfully refused to refer and dispatch Mohamed to employment with the American Building Main-

tenance Company in March 1990 and unlawfully refused to refer and dispatch Coen to employment with that employer in August 1989 and September 1990, with interest to be paid on the amounts owing.

WE WILL honor Yhya Mohamed's request to view our hiring facility records where such a request is related to our alleged failure to properly refer him for employment, including but not limited to those requests made by Mohamed's letters to us dated May 15 and November 13, 1990.

THEATRE AND AMUSEMENT JANITORS UNION  
LOCAL 9, SERVICE EMPLOYEES INTER-  
NATIONAL UNION, AFL-CIO